IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

CRL.A.No. 484 of 2000()

ST.1279/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KATTAPPANA

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APPELLANT:

VANDANMMEDU DEVELOPMENT SOCIETY,
REPRESENTED BY AUGUSTINE NICHOLAOS,
S/O.NICHOLAS, AGED 32,
PULIYANMALA, KATTAPPANA VILLAGE,
UDUMPANCHOLA TALUK.

BY ADV. SRI.T.V.GEORGE
SRI.C.V.SHAJU
SMT.K.SAJEENA

RESPONDENTS:

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1. P.K.MOHANAN,
PUTHENPURACKAL HOUSE,
AGED 35 YEARS,
PUTTADIKARA, VANDANMMEDU VILLAGE,
UDUMPANCHOLA TALUK.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI.K.C.ELDHO
PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.484 of 2000-C

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Dated this the 11th day of September, 2007

J U D G M E N T

The appellant is the complainant in S.T.No.1279/1997, the proceedings initiated under Section 138 of the Negotiable Instruments Act, which ended up in the acquittal of the accused.

2. The case of the complainant, Society, is that the wife of the accused availed a loan from the Society and, towards the amount due the accused issued the cheque. The cheque amount is Rs.12,095/-. The cheque when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent was received but no reply was sent. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P8.

3. The defence case is that only a blank cheque was issued and that the amount alleged is not due. PW.1, the power of attorney holder of the Society has testified as such to the transaction. He stated that on 09/06/1997 the amount due was Rs.12,095/- and the accused issued Ext.P2 cheque towards the above amount due. It is admitted that the amount was filled up by the staff at the office of the

Society. The court below acquitted the accused only on the ground that the entries in the cheque except the signature has not been written by the accused but by the officials of the Society. As pointed out by the counsel for the appellant, the cheque issued as security can be filled up with authorisation and the same is no ground to defeat the case under Section 138 N.I.Act; **Moideen vs.Johney [2006 (3) KLT SN.85]**.

In the circumstances, the order of the court below acquitting the accused is set aside. The accused/respondent is convicted for the offence under Section 138 of the N.I.Act and sentenced to undergo imprisonment till the rising of the court and to pay compensation of Rs.12,095/- to the complainant and in default to undergo simple imprisonment for one month. He shall appear before the Judicial Magistrate of the First Class Court, Kattappana on 12/11/2007 to receive the sentence.

The appeal is allowed as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.484 of 2000-C

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J U D G M E N T

11th September, 2007